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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:
In re:	:
	Chapter 11
	:
DPH Holdings Corp., <u>et al.</u> ,	:
	Case No. 05-44481 (RDD)
	:
	:
Debtors.	:
	(Jointly Administered)
	-----x

**RESPONSE OF WAMCO, INC. TO THE FORTY-THIRD OMNIBUS
OBJECTION OF THE REORGANIZED DEBTORS TO PROOFS OF CLAIM**

Wamco, Inc. (“Wamco”), by and through its undersigned counsel, files this response (the “Response”) to the Forty-third Omnibus Claims Objection (the “Objection”)¹ filed by DPH Holdings Corp. and certain of its affiliated reorganized debtors in the above-captioned cases (collectively, the “Reorganized Debtors”). In support of its Response, Wamco respectfully represents as follows:

¹ See Reorganized Debtors’ Forty-third Omnibus Claims Objection Pursuant to 11 U.S.C. § 503(b) and Fed. R. Bankr. P. 3007 to (I) Expunge Certain Administrative Expense (A) Severance Claims, (B) Books and Records Claims, (C) Duplicate Claims, (D) Equity Interests, (E) Prepetition Claims, (F) Insufficiently Documented Claims, (G) Pension, Benefit and OPEB Claims, (H) Workers’ Compensation Claims, and (I) Transferred Workers’ Compensation Claims, (II) Modify and Allow Certain Administrative Expense Severance Claims, and (III) Allow Certain Administrative Expense Severance Claims [Docket No. 19356].

BACKGROUND

1. On October 8, 2005 (the “Petition Date”), Delphi Corporation and certain of its affiliates (the “Debtors”)² filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. Also on the Petition Date, the Debtors filed a motion seeking an order confirming that their subcontractors, suppliers, and vendors (each a “Vendor”) would have administrative expense priority claims for obligations arising from prepetition purchase orders outstanding on the Petition Date relating to materials, supplies, goods, products, and related items (the “Vendor Claims”) that were or would be accepted by the Debtors on or subsequent to the Petition Date (the “Administrative Expense Motion”).³ In the Administrative Expense Motion, the Debtors asserted that the Vendor Claims were “by definition, administrative expenses,” and thus the Debtors believed they had the authority to pay the Vendor Claims in the ordinary course of business to ensure postpetition delivery of the applicable goods. Accordingly, the Debtors stated that they were seeking Court authority to pay the Vendor Claims merely out of an abundance of caution. On October 13, 2005, the Court entered an order approving the Administrative Expense Motion (the “Administrative Expense Order”),⁴ finding that the Vendor Claims were entitled to administrative expense priority pursuant to Bankruptcy Code section 503(b).

² The Debtors’ plan of reorganization became effective on October 6, 2009 (the “Effective Date”). In connection therewith, the Debtors emerged from bankruptcy as the Reorganized Debtors. The Reorganized Debtors are responsible for, among other things, for the post-Effective Date administration of these chapter 11 cases.

³ See Motion for Order Under 11 U.S.C. § 503(b) Confirming Grant of Administrative Expense Status to Obligations Arising from Postpetition Delivery of Goods and Authorizing Debtors to Pay Such Obligations in the Ordinary Course of Business [Docket No. 20].

⁴ See Order Under 11 U.S.C. § 503(b) Confirming Grant of Administrative Expense Status to Obligations Arising from Postpetition Delivery of Goods and Authorizing Debtors to Pay Such Obligations in the Ordinary Course of Business [Docket No. 218].

3. On or about July 9, 2009, Wamco timely filed a proof of claim for administrative expenses [Claim No. 18051] (the “Wamco Proof of Claim”) in the Debtors’ cases in connection with certain goods Wamco delivered to the Debtors during the postpetition period pursuant to various prepetition purchase orders (the “Wamco Goods”) for which Wamco had not been paid. Because the Wamco Goods were delivered to the Debtors during the postpetition period, Wamco asserted that it was entitled to an administrative expense claim for \$52,781.50, the total amount owed for the Wamco Goods.

4. On October 15, 2009, the Reorganized Debtors filed their Thirty-seventh Omnibus Claims Objection.⁵ By the Thirty-seventh Omnibus Claims Objection, the Reorganized Debtors sought to expunge, among others, the Wamco Proof of Claim, on the basis that it arose from a prepetition claim and thus was not entitled to administrative priority.

5. On or about October 21, 2009, counsel for Wamco notified counsel for the Reorganized Debtors that, as evidenced by the packing slips sent to counsel for the Reorganized Debtors and attached hereto as **Exhibit A**, the Wamco Goods were delivered during the postpetition period (specifically, on October 10, 2005), and thus Wamco’s claim in connection with the Wamco Goods was entitled to administrative priority pursuant to Bankruptcy Code section 503(b)(1). Accordingly, on November 17, 2009, the Reorganized Debtors withdrew the Thirty-seventh Omnibus Claims Objection with respect to the Wamco Proof of Claim.⁶

⁵ See Reorganized Debtors’ Thirty-seventh Omnibus Objection Pursuant to 11 U.S.C. § 503(b) and Fed. R. Bankr. P. 3007 to Expunge Certain (I) Prepetition Claims, (II) Equity Interests, (III) Books and Records Claims, (IV) Untimely Claims, (V) Paid Severance Claims, (VI) Pension Benefit and OPEB Claims, and (VII) Duplicate Claims [Docket No. 18984].

⁶ See Debtors’ Omnibus Reply in Support of Thirty-seventh Omnibus Objection Pursuant to 11 U.S.C. § 503(b) and Fed. R. Bankr. P. 3007 to Expunge Certain (I) Prepetition Claims, (II) Equity Interests, (III) Books and Records Claims, (IV) Untimely Claims, (V) Paid Severance Claims, (VI) Pension, Benefit and OPEB Claims, and (VII) Duplicate Claims [Docket No. 19100].

6. Despite having previously withdrawn the Thirty-seventh Omnibus Claims Objection with respect to the Wamco Proof of Claim, on January 22, 2010, the Reorganized Debtors filed the Objection, again seeking to expunge the Wamco Proof of Claim on the basis that it arose from a prepetition claim.

RESPONSE

7. Wamco is entitled under Bankruptcy Code section 503(b) to allowance and payment of an administrative expense for the postpetition delivery and acceptance of the Wamco Goods by the Debtors pursuant to various prepetition purchase orders. Pursuant to Bankruptcy Code section 503(b), the “actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case” are allowable as administrative expenses. *See* 11 U.S.C. § 503(b)(1)(A). Further, by the Debtors’ own admission, under Bankruptcy Code section 503(b), “all obligations that arise in connection with the postpetition delivery of [g]oods to the Debtors are, by definition, administrative expenses.” Administrative Expense Motion, ¶ 17.

8. Courts have held that vendors are entitled to administrative expense priority for their claims in connection with goods ordered by the debtor prepetition but delivered and accepted by the debtor postpetition if, at the time the petition is filed, the risk of loss remained on the vendor. *See, e.g., Collingwood Grain, Inc. v. Coast Trading Co. (In re Coast Trading Co.),* 744 F.2d 686, 693 (9th Cir. 1984); *In re A. Marcus Co.*, 64 B.R. 207, 209-10 (N.D. Ill. 1986); *In re World Fashions, Inc.*, 24 B.R. 452, 454 (Bankr. N.D. Ga. 1982). In *Coast Trading*, the Ninth Circuit held that where a vendor ships goods prepetition pursuant to a prepetition purchase order but retains the right to stop the goods in transit and prevent delivery during the postpetition period, the vendor’s claim is entitled to administrative expense priority, regardless of whether the vendor actually exercises its right to stop delivery. *Coast Trading*, 744 F. 2d at 693. Further, in

In re Harnischfeger Industries, Inc., a vendor performed postpetition services for the debtor pursuant to prepetition purchase orders. *In re Harnischfeger Indus., Inc.*, 293 B.R. 650, 659 (Bankr. D. Del. 2003). The bankruptcy court held that “if the debtor-in-possession elects to continue to receive benefits” pursuant to a contract entered into prepetition, “the debtor-in-possession is obligated to pay for the reasonable value of those services” as an administrative expense. *Id.*

9. A claim is entitled to administrative expense priority when “the debt both (1) ‘arise[s] from a transaction with the debtor-in-possession’ and (2) is ‘beneficial to the debtor-in-possession in the operation of its business.’” *In re Jartran, Inc.*, 732 F.2d 584, 587 (7th Cir. 1984) (quoting *In re Mammoth Mart, Inc.*, 536 F.2d 950, 954 (1st Cir. 1976)). In applying this test in connection with the Administrative Expense Motion, the Debtors stated that the first prong of the test is satisfied when the Debtors receive and accept goods postpetition, as was the case with Wamco’s claim and the other Vendor Claims. Administrative Expense Motion, ¶ 20. The Debtors further stated that the second prong of the test was satisfied with respect to the Vendor Claims because the goods were “absolutely critical for the uninterrupted operation of the Debtors’ production facilities,” and “[w]ithout such Goods, the Debtors cannot manufacture and deliver Goods to their customers.” *See id.*

10. Wamco delivered the Wamco Goods to the Debtors on October 10, 2005, pursuant to various prepetition purchase orders dated October 4 and October 5, 2005, and thus Wamco is a “Vendor” as such term is defined in the Administrative Expense Motion. *See* Administrative Expense Motion, ¶ 15. Accordingly, pursuant to the terms of the Administrative Expense Order and the Debtors’ own admissions in the Administrative Expense Motion, Wamco’s claim is a Vendor Claim that is entitled to administrative expense priority status. Further, because Wamco

retained the right to stop delivery of the Wamco Goods in transit and the Debtors elected to continue reaping the benefits of their prepetition purchase orders with Wamco during the postpetition period, pursuant to the foregoing authority, Wamco is entitled to an administrative expense priority claim for the total value of the Wamco Goods.

WHEREFORE, Wamco respectfully requests that this Court enter an order (i) denying the Objection with respect to the Wamco Proof of Claim and (ii) granting Wamco such other and further relief as is just.

Los Angeles, CA
Dated: February 17, 2010

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Peter Gurfein

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Attorneys for Wamco, Inc

EXHIBIT A

Packing Slips (Wamco Goods)

Page 1 of 1

PACKING SLIP



✓

SID#:
(2S)

DPH1993

SHIP TO: DELPHI D DELTRONICOS
702 JOAQUIN CAVAZOS
LOS INDIOS

TX 78567

SHIP FROM: WAMCO, INC
11555 COLEY RIVER CIR.
FOUNTAIN VALLEY

CA 92708

PART NUMBER	QUANTITY
9398403	3000 ✓
16268963	2000 ✓
28012453	20000 ✓

938051 OCT 04, 2005 ACT WT 8.7 #PK 3
SERVICE ZDA BILL WT 10
TRACKING# 129380510241347882
PURCHASE NO.: DPH1993
REF 2:

HANDLING CHARGE \$0.00
REFERENCE RATE CHARGES:
DV \$0.00 COD \$0.00 SERVICE \$0.00
DC \$0.00 HZMT \$0.00 SD \$0.00
AH \$0.00 NTFY \$0.00 SP \$0.00
TOT REF CHG: \$43.20 REF+HANDLING \$43.20

Y= 113.26

MANUFACTURING PLANT
FOR ALL PARTS
DUNS #691735674

SUPPLIER DUNS #049915556

DA26
10/4/05
UPS BWE COLLECT

Print Date & Time : 10/12/2005 05:38:30:790

Page 1

AIT-PRINT 2000

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Receiving Advice Message

Document Message ID : 632 Reference Number : 0185037727
Purpose : Original Response Type Code :
Report Creation Date : 10/11/2005
Creation Date : 10/12/2005
Received Date :
Document/Message Name : 632

Supplier Name : Supplier Code : 0001003346
Ship To : Ship To Code : DA26

✓
ShippersID No : DPH1993
Customer RefrenceNo : 0185037727

=====Buyer's Item Number : 9398403 ✓
Received Quantity : 3000
Despatch Quantity : 3000
Short Shipped Qty : 0
Order No : 0550039044

=====Buyer's Item Number : 16268963 ✓
Received Quantity : 2000
Despatch Quantity : 2000
Short Shipped Qty : 0
Order No : 0550041266

=====Buyer's Item Number : 28012453 ✓
Received Quantity : 20000
Despatch Quantity : 20000
Short Shipped Qty : 0
Order No : 0550045379

UPS Package Tracking

Page 1 of 1

Log-In User ID: Password: | [Forgot Password](#)

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Track by Tracking Number

[View Details](#)

Status: Delivered
Delivered on: 10/10/2005 9:55 A.M.
Signed by: CAHAVARRIA
Location: RECEIVER
Delivered to: LOS INDIOS, TX, US

DPH 1993

Tracking Number: 1Z 938 051 02 4194 788 2
Service Type: 2ND DAY AIR

Package Progress:

Location	Date	Local Time	Activity
HARLINGEN, TX, US	10/10/2005	9:55 A.M.	DELIVERY

Tracking results provided by UPS: 04/05/2006 3:10 P.M. Eastern Time (USA)

Page 1 of 1

PACKING SLIP



SID#:
(2S)

DPH1994

SHIP TO: DELPHI D DELNORTE
702 JOAQUIN CAVAZOS
LOS INDIOS

TX 78567

SHIP FROM: WAMCO, INC
11555 COLEY RIVER CIR
FOUNTAIN VALLEY

CA 92708

PART NUMBER	QUANTITY
9370023	24000
9370523	54000
9371072	10000
9382270	7000
9383783	2000
9394719	1000
9399279	3000
9400327	1000
16081218	2000
16187944	4000
16209091	4000
28023244	3000

Y = 113.26

938051 OCT 04, 2005 ACT WT 65.9 RPK 14
SERVICE 20A BILL WT 71
TRACKING# 1Z9380510242914030
PURCHASE NO.: DPH1994
REF Z:

HANDLING CHARGE \$0.00
REFERENCE RATE CHARGES
DY \$0.00 COD \$0.00 SERVICE \$0/C
DC \$0.00 HZMT \$0.00 RS \$0.00
AH \$0.00 NTFY \$0.00 SD \$0.00
TOL REF CHG \$246.00 REF+HANDLING SP \$0.00

MANUFACTURING PLANT
FOR ALL PARTS
DUNS #691735674

SUPPLIER DUNS #049915556

DA31
10/4/05
UPS BLUE COLLECT

Print Date & Time : 10/12/2005 05:38:32:443

Page 1

AIT-PRINT 2000

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Purpose : Original Response Type Code :
Report Creation Date : 10/11/2005
Creation Date : 10/12/2005
Received Date :
Document/Message Name : 632

Supplier Name : Supplier Code : 0001003346
Ship To : Ship To Code : DA31

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ShippersID No : DPH1994
Customer RefrenceNo : 0185037726

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Received Quantity : 24000
Despatch Quantity : 24000
Short Shipped Qty : 0
Order No : 0550040540

=====✓
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Received Quantity : 54000
Despatch Quantity : 54000
Short Shipped Qty : 0
Order No : 0550072650

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Received Quantity : 10000
Despatch Quantity : 10000
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Order No : 0550074262

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Despatch Quantity : 2000
Short Shipped Qty : 0
Order No : 0550078058

=====✓
Buyer's Item Number : 9394719
Received Quantity : 1000
Despatch Quantity : 1000
Short Shipped Qty : 0
Order No : 0550078058

=====✓
Buyer's Item Number : 9399279
Received Quantity : 3000
Despatch Quantity : 3000
Short Shipped Qty : 0

Print Date & Time : 10/12/2005 05:38:32:443

Page 2

Order No : 0550072650

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Despatch Quantity : 1000
Short Shipped Qty : 0
Order No : 0550077643

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Received Quantity : 2000 ✓
Despatch Quantity : 2000
Short Shipped Qty : 0
Order No : 0550077643

=====Buyer's Item Number : 16187944
Received Quantity : 4000 ✓
Despatch Quantity : 4000
Short Shipped Qty : 0
Order No : 0550070526

=====Buyer's Item Number : 16209091
Received Quantity : 4000 ✓
Despatch Quantity : 4000
Short Shipped Qty : 0
Order No : 0550075308

=====Buyer's Item Number : 28023244
Received Quantity : 3000 ✓
Despatch Quantity : 3000
Short Shipped Qty : 0
Order No : 0550077643

UPS Package Tracking

Page 1 of 1

Log-in User ID: Password: | [Forgot Password](#)

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Track by Tracking Number

[View Details](#)

Status: Delivered
Delivered on: 10/10/2005 9:55 A.M.
Signed by: CAHAVARRIA
Location: RECEIVER
Delivered to: LOS INDIOS, TX, US

DPH 1994

Tracking Number: 1Z 938 051 02 4291 403 0
Service Type: 2ND DAY AIR

Package Progress:

Location	Date	Local Time	Activity
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Tracking results provided by UPS: 04/05/2006 3:12 P.M. Eastern Time (USA)

Page 1 of 1 ✓

PACKING SLIP



SID#:
(2S)

DPH1997

SHIP TO: DELPHI D DELNORTE
702 JOAQUIN CAVAZOS
LOS INDIOS TX 78567

SHIP FROM: WAMCO, INC
11555 COLEY RIVER CIR
FOUNTAIN VALLEY CA 92708

PART NUMBER	QUANTITY
9370023	90000
9370523	54000
9371072	12000
9383783	2000
9394719	1000
9399279	10000
16187944	2000
28023244	1000

938051 OCT 05, 2005 ACT WT 82.0 HPK 11
SERVICE 2DA BILL WT 87
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TOT REF CHG \$253.70 SP \$0.00
REF/HANDLING \$253.70

MANUFACTURING PLANT
FOR ALL PARTS
DUNS #691735674

SUPPLIER DUNS #049915556

DA31
10/5/05
UPS BLUE COLLECT

Print Date & Time : 10/12/2005 05:38:42:888

Page 1

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Creation Date : 10/12/2005
Received Date :
Document/Message Name : 632

Supplier Name : Supplier Code : 0001003346
Ship To : Ship To Code : DA31

ShippersID No : DPH1997 ✓
Customer RefrenceNo : 0185045984

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Received Quantity : 90000
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Order No : 0550040540

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Received Quantity : 2000
Despatch Quantity : 2000
Short Shipped Qty : 0

Print Date & Time : 10/12/2005 05:38:42:888

Page 2

Order No : 0550070526

=====

Buyer's Item Number : 28023244 ✓
Received Quantity : 1000
Despatch Quantity : 1000
Short Shipped Qty : 0
Order No : 0550077643

=====

UPS Package Tracking

Page 1 of 1

Log-in User ID: Password: | Forgot Password

[Register](#)

Track by Tracking Number

[View Details](#)

Status: Delivered
Delivered on: 10/10/2005 9:55 A.M.
Signed by: CAHAVARRIA
Location: RECEIVER
Delivered to: LOS INDIOS, TX, US

DPH 1997

Tracking Number: 1Z 938 051 02 4125 600 2
Service Type: 2ND DAY AIR

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